

DOR  
Home

For  
Individuals and Families

For  
Businesses

For  
Local Officials

For  
Tax Professionals

Home > Businesses > Help & Resources > Legal Library > Directives > Directives - By Decade > (1980-1989) Directives >

# Directive 86-35: Security Corporations Loans To Shareholders, Directors, Or Employees

**FACTS:** Carry Corporation is a domestic corporation that had been engaged in manufacturing. During a previous taxable year, Carry ceased its manufacturing activities and sold its plant, equipment, and other assets in exchange for cash.

Since that time, Carry Corporation has invested most of its cash in marketable securities for the purpose of investment. From time to time, however, Carry also makes loans to its shareholders, directors, officers, and employees. These loans may or may not be evidenced by promissory notes, and may or may not be at market rates of interest.

**ISSUE:** May Carry Corporation qualify for tax treatment as a security corporation if it makes loans to its shareholders, directors, officers, and employees?

**DISCUSSION:** In general, a corporation may qualify for tax treatment as a security corporation, provided that it is engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker. G.L. c. 63, § 38B. To satisfy this requirement, a corporation must be engaged exclusively in buying, selling, dealing in, or holding marketable securities for the purpose of investment. *State Tax Commission v. PoGM Co.*, 369 Mass. 611, 613 (1976); *Industrial Finance Corp. v. State Tax Commission*, 367 Mass. 360, 366 (1975). Loans to shareholders, directors, officers, or employees of a corporation lack the characteristics of marketable securities bought and held for investment purposes, whether or not the loans are evidenced by promissory notes, and whether or not the loans are at market rates of interest. *See State Tax Commission v. PoGM Co.*, 369 Mass. 611 (1976); *Industrial Finance Corp. v. State Tax Commission*, 367 Mass. 360 (1975). The fact that a major portion of a corporation's activities may fit the statutory definition, moreover, does not satisfy the statutory requirement. *State Tax Commission v. PoGM Co.*, 369 Mass. at 612; *Chatham Corp. v. State Tax Commission*, 362 Mass. 216 (1972). The same results obtain if a shareholder is another corporation.

**DIRECTIVE:** Carry Corporation may not qualify for security corporation classification if it makes loans to its shareholders, directors, officers, and employees.

**REFERENCE:** G.L. c. 63, § 38B; *State Tax Commission v. PoGM Co.*, 369 Mass. 611 (1976); *Industrial Finance Corp. v. State Tax Commission*, 367 Mass. 360 (1975); *Chatham Corp. v. State Tax Commission*, 362 Mass. 216 (1972).

31 December 1986

/s/Ira A. Jackson  
Ira A. Jackson  
Commissioner of Revenue

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 C.M.R. § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as

SEARCH

Select an area to search

Search

those set forth in this Directive.

143864